

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the matter of:)	
)	
Amendment of Part 74 of the Commission's)	MB Docket No. 18-119
Rules Regarding FM Translator Interference)	

REPLY COMMENTS OF REC NETWORKS

I. INTRODUCTION

1. Founded in 1984, REC Networks (REC) is a leading advocacy voice for a citizen's access to spectrum through broadcast and other radio services. REC's constituency includes but is not limited to Low Power FM (LPFM), rural commercial and noncommercial broadcasting and non-broadcast services such as the Amateur Radio Service. In these *Reply Comments*, REC will address the comments made in connection with the *Notice of Proposed Rulemaking (NPRM)* in the above captioned proceeding released on May 10, 2018.

II. ISSUES RAISED IN NPRM

A. Channel changes

2. One of REC's goals with the LPFM service is to make a rule structure where LPFM stations and FM translators are on as much of a level playing field as possible while remaining within the spirit of the Local Community Radio Act.¹ The proposal to allow FM translators to change to "any channel" within their band upon a showing of reduced interference is consistent with bring LPFM and FM translators to a more level playing field.² This concept did receive considerable support in the proceeding.³ REC also agrees with NTA's notion that

¹ - Pub. L. 111-371, 124 Stat. 4072 (2011) ("LCRA").

² - See 47 C.F.R. §73.870(a) (Allowing an LPFM station, upon a showing of reduced interference to change to "any channel".)

³ - National Association of Broadcasters (NAB) Comments at 3; National Translator Association (NTA) Comments at 3; Beasley Media Group, LLC et al (Joint Commenters) Comments at 3; Scott Fybush (Fybush) at ¶6; Aztec Capital Partners ¶6; Aleluya Broadcasting Comments at 2; Cumulus Comments at

FM translators operating as noncommercial educational (NCE) should be permitted to “band hop” between the commercial and reserved bands.⁴ REC also agrees that a FM translator needs to be on the air in order to make a non-adjacent channel change.⁵

3. REC does feel that for a channel change as a result of incoming or outgoing interference should not be any kind of a “trigger” for a requirement for an anti-preclusion study as suggested by the LPFM Coalition (LPFM/C).⁶ Like with LPFM, in a majority of cases where a channel change is being done as a result of interference or displacement, the FM translator is likely to remain at their current location with the same or a different directional antenna pattern thus meaning that the service area of the translator would primarily remain the same. REC understands LPFM/C’s concerns about a channel change by a translator potentially removing a potential channel for an LPFM station and the Commission’s mandate under §5(1) and (2) which states that licenses be made available to FM translator stations, FM booster stations, and LPFM stations and such decisions are based on the needs of the local community.⁷

4. While the LCRA qualifies the requirements §5(1) and (2) in respect to the licensing of new stations, a channel change could remove an LPFM opportunity in an area up to 4,778 square kilometers around the FM translator (39 km radius).⁸ This is an issue that can be

2-3; Henson Media at 2; Charles M. Anderson Comments at 1; Communications Technologies, Inc. (CTI) Comments at 1; Crawford Broadcasting Company Comments at 2.

⁴ - NTA Comments at 3; Cumulus Comments at 3; Mountain Community Translators (MCT) Comments at 1-2; Sam Brown Comments at 1. Channels 201 through 220 are considered in the “reserved” band for use by noncommercial educational (NCE) licensees, including LPFM stations.

⁵ - T.Z. Sawyer Comments at 1-2.

⁶ - LPFM/C Comments at ¶10; Jeff Sibert (Sibert) Comments at 4.

⁷ - We must also consider that such a plan could backfire in communities such as Seattle/Tacoma WA, Miami/Fort Lauderdale FL, Portland OR, Tampa/St. Petersburg FL, Mc Allen TX, Baton Rouge LA and Augusta GA where LPFM stations outnumber FM translators inside the 30 minute by 30 minute grid. (See: https://recnet.net/fcc/lcra_2018_markets.pdf) In those cases to be consistent with LPFM/C’s logic, in order to meet the perceived LCRA §5(1) and (2), LPFM stations seeking channel changes due to interference or displacement may have to provide anti-preclusion studies to show that no FM translator opportunities are removed as a result of the channel change.

⁸ - See 47 C.F.R. §73.807(c). In respect to FM translators that have a service contour exceeding 13.3 kilometers, subsequent LPFM proposals must provide a minimum of 39 kilometers of distance separation

remedied in some cases through the ability for LPFM applicants, especially those facing their own interference or displacement to be able to request a waiver of §73.807(c) to permit co-channel or first-adjacent channel short-spacing to a FM translator facility upon a showing of a lack of contour overlap and under a condition of a lack of interference consistent with §74.1203(a). As demonstrated, this method can be done in accordance with the LCRA because it still “prescribes protection” in accordance with LCRA §2 and since FM translators are not considered as “full-service FM station”, distance separation as the protection method is not required in accordance with LCRA §3(b)(1) of the LCRA.⁹ Utilizing LPFM/C’s argument that LCRA §5 could apply to existing FM translators seeking modification, allowing these waivers would be consistent with LCRA §5(2) by bringing the decision back to the need of the local community. Allowing these waivers and then eventually codifying this method of protection in a future rulemaking would be much more consistent with the spirit of LCRA §5.

B. Threshold of listener complaints to trigger action

5. REC wholeheartedly agrees with the LPFM/C’s statement that the NAB only addressed interference to full-service FM stations in their original *Petition for Rulemaking*.¹⁰ Thus, the NAB considers a minimum of six listener complaints to be a “reasonable threshold”.¹¹ REC does align with the LPFM/C comments regarding this subject.¹² Further, REC feels that for every listener complaint that is received and placed on the record there may be more listeners who are experiencing the same or worse interference and they are unable to complain because they do not know how or they do not wish to complain because they either want to remain anonymous or because of the current method of reporting interference, there is no expectation of

from the translator facility or if already short-spaced, does not decrease the spacing. Subpart G currently treat all FM translators as non-directional facilities, even if the translator is “looking” completely away from the LPFM station.

⁹ - Distinctions between “full-service FM” and “FM translator” stations are made in the LCRA at §§ 3(a) and 5(3).

¹⁰ - LPFM/C Comments at ¶29.

¹¹ - NAB Comments at 5.

¹² - LPFM/C Comments at ¶17-31.

privacy that can lead to identity theft, “swatting”¹³ and like we are seeing playing out right now, threats of litigation against the listener. In some cases, it may result in legal action against the complainant based on their immigration status.¹⁴

6. In our comments, we did recommend a minimum threshold of three listener complaints for LPFM stations, FM translators and small Class A stations but we stated that reduced threshold as it relates to LPFM is if the Commission *insists* on having a minimum threshold of listener complaints to trigger action.¹⁵ REC’s primary position is that where it comes to LPFM stations that are §73.807(c) short-spaced to the proposed translator, a single complaint should be all that is necessary to trigger Commission action. Many LPFM stations have a unique nature of programming and a unique nature of listener including those from socioeconomic backgrounds that would preclude listeners from using alternative delivery methods to receive the specialized programming that LPFM stations provide (i.e. internet streaming) and due to license fees, many LPFM stations are not providing any kind of streaming and limiting their delivery to over the air.¹⁶

C. Standardizing interference complaint information and eligibility

7. Privacy of complainant listeners. REC feels that too much time is being wasted on arguing the eligibility of a listener complaint and that inconsistent handling of some listeners, especially those who listen while mobile take place. We are seeing the former playing out in an open proceeding in a Top-10 southwest market. Under the current process, complainant listeners

¹³ - The Oxford Dictionary defines “swatting” as “[t]he action or practice of making a hoax call to the emergency services in an attempt to bring about the dispatch of a large number of armed police officers to a particular address. See <https://en.oxforddictionaries.com/definition/swatting> (retrieved August 31, 2018).

¹⁴ - See also: Fybush Comments at ¶8 (“...neither three nor six such ‘listener complaints’ would provide a full, or even useful, picture of real-world interference...”); Sibert Comments at 5.

¹⁵ - See REC Comments at ¶13 where we suggest a minimum of 3 bona-fide listener complaints when the incumbent station is an LPFM, FM translator, FM booster, Class D NCE FM station or a Class A station with a service contour of less than 13.5 kilometers. We further clarify our position in ¶36 that LPFM stations should continue to receive protections under the current rules (i.e. no outer limit, no minimum threshold of complaints) if the proposal by the translator results in a §73.807(c) short-spacing.

¹⁶ - See REC Comments at ¶20.

are being victimized through threats of litigation and being forced to change their listening methods just because they dared to file a complaint.¹⁷ REC does feel that we need to remove the listener from the ultimate interference reduction process.¹⁸ We also need to assure that listeners are able to be assured that if they file a complaint through their incumbent station, the identity of the complainant will be fully protected from the public record as well as the party the complaint is being lodged against. REC continues to support our original comments requiring unredacted listener complaints to be sent under confidentiality directly to the Commission while the public record and the infringing translator would receive a redacted version of the complaint.

8. Definition of a “disinterested” party. REC agrees with LPFM/C that a disinterested party should be someone who does not have a direct financial or control interest in the station.¹⁹ With that, an *interested* party would include any paid staff, contractor or vendor of the station as well as any member of management (voluntary or paid) and any member of the licensee organization’s board of directors. Since many LPFM stations are licensed to non-profit organizations that were engaged in other activities before engaging in broadcasting, we must also include that paid staff under this umbrella, even if they do not directly interact with the station’s operations. Since they are under the licensee organization, it may be possible that a portion of their salary is derived from underwriting to the station. Of course, the status of an interested party must also be extended to immediate family. With this, REC aligns our positions with LPFM/C on this subject.²⁰

9. Minimum listening per month. REC will align itself fully with LPFM/C position that the “twice monthly” listening requirement is unnecessary given the nature of LPFM’s unique programming and utilization, especially for LPFM stations that are operated by a municipality’s public access, education and government (PEG) programming provider such as

¹⁷ - REC Comments at ¶9.

¹⁸ - See also T.Z. Sawyer Comments at 2 (“[R]equiring listener participation [...] is wrong headed and a waste of valuable time and other resources.”)

¹⁹ - LPFM/C Comments at ¶39.

²⁰ - LPFM/C Comments at ¶34-40.

the City of Boston, licensee of WBCA-LP.²¹ LPFM stations in the Government-Public Safety segment offer a unique service to residents of their communities including those that are not able to afford cable television service nor mobile broadband. These LPFM stations fill in that void by providing live coverage of government events such as City Council meetings. Many of those meetings are only carried once per month. Listeners should not be penalized because they only listen to a particular LPFM station only once a month. Those listeners deserve the same interference protections as a station with more general interest throughout the month.

D. Listener complaints based on contours

10. As stated in our comments, it is REC's position that because of the nature of LPFM stations, their programming and accessibility (i.e. lack of streaming), any translator that does not meet the §73.807(c) distances to an LPFM station should be subject to interference handling without an outer limit based on contour.²²

11. LPFM/C raises some beyond excellent points on why contours will not work.²³ Contours only take into consideration the terrain between 2 and 10 miles from the transmitter site where a terrain-based propagation model, such as Longley/Rice looks at all terrain. LPFM/C does clearly demonstrate how that even outside of the 60 or 54 dBu contour of a broadcast station, it is very possible to have a significant number of potential listeners, especially with the terrain on the west coast.²⁴

12. In Canada, the service contours of a FM station is considered out to the 54 dBu F(50, 50) contour using the FCC field strength curves. Most of the rest of the world are using

²¹ - LPFM/C Comments at ¶41-50. This revises REC Comments at ¶12 where we included a bullet-point that suggests that the complainant listens to the station at least twice a month. LPFM/C raises an excellent point in this situation.

²² - REC Comments at ¶24. Only if the FCC had *insisted* on using a contour-based outer limit, we stated that 54 dBu is too close, especially for LPFM stations and had suggested using a 48 dBu contour in respect to LPFM stations. See REC Comments at ¶26.

²³ - LPFM/C Comments at ¶51-55; See also Sibert Comments at 6.

²⁴ - LPFM/C Comments at Attachment B; see also Blue Ridge Broadcasting Corporation (Blue Ridge) Comments at 4; Pueblo Broadcasting Comments at 2.

the field strength curves specified by the International Telecommunications Union.²⁵ In a different recommendation, the ITU considers 54 dBu as a minimal usable field strength in rural environments for stereophonic FM broadcast stations.²⁶ At 1kW at 100 meters height above average terrain (HAAT), the FCC 54 dBu F(50, 50) curve extends to 25.82 kilometers. The ITU 54 dBu F(50, 50) curve extends to 25.82 km. Therefore, the ITU considers a minimum usable field strength to be 52.5 dBu using the FCC curves. Therefore, a 54 dBu outer limit utilizing FCC curves does not even meet the definition of what the rest of the world considers as the service area of a FM broadcast station.²⁷

13. REC will subscribe to the study performed by LPFM/C in their Comments at Attachment B as an authoritative evaluation of the issues that LPFM stations are currently facing in respect to the locations of their listeners. It clearly demonstrates that the use of contours is useless for establishing a demarcation point between where a station has listeners and where they do not.²⁸ REC does continue to take the position that due to the unique nature of LPFM programming, the socioeconomic status of the audience that some LPFM stations reach as well as due to the fact that not all LPFM stations are streaming their content, we must stick with our original position that in the cases where an FM translator does not meet the distance spacing in §73.807(c) may not cause interference to incumbent LPFM broadcast stations consistent with the current rules in §74.1203(a) and §74.1204(f).

III. OTHER ISSUES RAISED IN COMMENTS

14. Holding up this proceeding in favor of RM-11810. In their Comments, LPFM Advocacy Group (LPFM-AG) had suggested that the Commission withhold progress on this

²⁵ - See ITU-R. P. 1546-5.

²⁶ - See Rec. ITU-R. BS.412-9 at §1.1.

²⁷ - See also WJFD-FM Comments at 1 (“This specific proposal seems to ignore the fact that many stations, including WJFD, have a significant number of long-time listeners who live, work or commute outside of the protected contour.”); Cohen, Dippell and Everest Comments at 3; New York Public Radio Comments at 4; Educational Media Foundation Comments at 9-11; Blue Ridge Comments at 2-4; Grant County Broadcasters Comments at 4;

²⁸ - See also: Calvary Chapel of Costa Mesa Comments at 3; National Public Radio Comments at 5.

proceeding until a decision is made on RM-11810.²⁹ As the author of RM-11810, REC can understand and appreciate LPFM-AG's desire to move RM-11810 to the head of the line. As the author of RM-11810, it is REC's position that such a hold on MB Docket 18-119 is not necessary. REC does feel that one part of REC's *Petition for Rulemaking* in RM-11810 can be achieved on a temporary basis by allowing LPFM stations to use contour overlap instead of minimum distance separation to demonstrate protection to FM translators when the LPFM station must file a modification application through a waiver request. As previously stated, the use of contour overlap in lieu of distance separation in respect to FM translators (and only FM translators) complies with LCRA §2 which requires the Commission to "prescribe protections" and such protection is not required to be distance separation as allowed by LCRA §3(b)(1). Due to the fact that this proceeding is ripe and some complaints against FM translator facilities, including those impacting LPFM stations are in abeyance, REC feels that it is appropriate to complete 18-119 before moving forward to RM-11810.

15. Modification of rules on FM Translator antenna systems. REC does agree with Sibert's concerns about the fact that FM translators are not required to provide any kind of third-party certification that the antenna was installed in a manner that is compliant with the construction permit.³⁰ Instead, the Commission depends on a self-certification process which is subject to gamesmanship. REC also mirrors Sibert's concerns regarding the use of certain directional antennas. REC would support putting a rule in place that would require a minimum forward to back ratio of -15 dB (0.178 field value) even if the antenna is designed to provide a tighter attenuation. The facility would be protected though to its actual attenuation. This will provide a minimal buffer zone to address some of the issues expressed by Sibert.

16. Concepts that violate the LCRA. Section 5(3) of the LCRA states that LPFM, FM translators and FM boosters are equal in status and shall remain secondary to full-service FM stations. There were several ideas brought up in comments that would violate the LCRA including giving "priority" to FM translators rebroadcasting AM stations over FM translators

²⁹ - LPFM-AG Comments at 4.

³⁰ - Sibert Comments at 6-7; Wheeler Broadcast Consulting Comments at 6-7.

rebroadcasting “HD” services³¹ as well as any attempt to bestow “primary” status to any FM translator carrying a specific service (i.e. AM).

17. Other concepts opposed by REC. REC opposes Alan Bishop’s concept of extending a minor change for a FM translator to be anywhere within the service contour of the primary station as opposed to overlapping service contours as well as Bishop’s concept of extending the “fill-in” areas for Class A stations out to 54 dBu.³²

IV. CONCLUSION

18. With the exception of their interpretation of the LCRA and related handling of FM translator non-adjacent channel changes, REC’s positions are now aligned with the LPFM Coalition in respect to issues related to minimum listener thresholds, reduction of the “regular listener” requirement to once per month and the definition of a disinterested party and a complete opposition to the concept of an “outer limit” for complaints in respect to LPFM stations. For other lower-powered facilities including Class D FM stations, FM translators and smaller Class A stations (non-LPFM stations), we do feel that a lower minimum listener threshold is necessary and for smaller non-LPFM stations, an outer limit of 54 dBu is draconian and will result in the wholesale loss of listener relationships. For non-LPFM stations, if an outer limit is found to be in the public interest, the standard needs to be set to a weaker field strength. REC rejects any proposal that undermines the LCRA despite its imperfections. Currently, LPFM stations that are short-spaced to directional FM translators are facing major hardships, all in the name of simplicity. A simple waiver process should be introduced to address the case-by-case situations that LPFM stations needing to move or change channels should be allowed to do in a manner that is consistent with their “equal in status” FM translator peers and in a manner that is consistent with the wording of the LCRA.

³¹ - Cromwell Group Comments at 1.

³² - Alan Bishop Comments at 1-2.

Respectfully submitted,

/S/

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